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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/478,849	01/06/2000	SHAWN L. KELLY	CIC-037-US	2262
26659	7590	11/18/2003	EXAMINER	
DINNIN & DUNN, P.C. 2701 CAMBRIDGE COURT, STE. 500 AUBURN HILLS, MI 48326			NGUYEN, THONG Q	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/478,849

Applicant(s)

KELLY, SHAWN L.

Examiner

Thong Q. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Response to Amendment***

1. The present Office action is made in response to the amendments filed on 12/04/2001 and on 11/11/2002.

### ***Reissue Applications***

2. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 5,706,137 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

3. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.
4. The oath/declaration of the present reissue application is received by the Office on 01/22/2001. The reissue oath/declaration is defective because it fails to contain a statement that all errors which are being corrected in the reissue application up to the

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time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414.

It is noted that a further review of the Declaration filed on 1/22/2001 has resulted that the Declaration does not contain a statement that states ***all errors*** which are being corrected in the reissue application up to the time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant (Examiner's emphasis).

5. Claims 1-43 and 46-75 are rejected as being based upon a defective reissue Declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the Declaration is set forth in the discussion above in this Office action.

6. The rejections of claims 33, (35, 37, 39, 41)/33, 57-60, and 63-64 under 35 U.S.C. 251 as set forth in the previous Office action (Paper No. 10, pages 2-3) are not withdrawn because applicant's arguments provided in the amendment are persuasive.

#### ***Drawings***

7. The drawings contain corrected figures 3-4 were received on 12/04/2001. These drawings are approved by the Examiner.

#### ***Specification***

8. The lengthy specification which is amended by the Amendment (Paper Nos. 11 and 18) of 12/4/01 and 11/11/02 has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 32-43, 66-69, and 72-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood (U.S. Patent No. 4,669,810) in view of Kato et al (U.S. Patent No. 5,187,597) and Opitek et al (U.S. Patent No. 3,915,548) (all of record).

See the rejection as set forth in the previous Office action (Paper No. 10, pages 7-9).

***Response to Arguments***

11. Applicant's arguments filed on 12/4/2001, pages 14-16 have been fully considered but they are not persuasive.

A) Regarding to the rejection of claims 32-43, 66-69 and 72-73 over the art of Wood, Kato et al and Opitek et al, applicant has argued that one skilled in the art will not make a modification of the Wood's device by arranging the position of the holographic element as suggested by Kato et al because such an arrangement will degrade the system. The examiner respectfully disagrees with the applicant for the following reasons: First, applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

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Second, the device as claimed is not patentable with respect to the applied art because 1) while applicant has concluded that an arrangement of the holographic element near the position of the intermediate image as taught by Kato et al in the system of Wood will degrade the system; however, a bare statement without any written support is not sufficient to overcome the rejection; and 2) the Examiner is of opinion that a rearrangement the position of the hologram (28) which is proximate to the location in which the intermediate image is formed will not damage the quality of the final image to be viewed because the formation of the image on the hologram provided by Kato et al has not resulted in any damage to the quality of the image.

Regarding to applicant's arguments relating to the type of light sources used in the system (see amendment, page 15), the examiner respectfully disagrees with the applicant. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

It is noted that in the rejection, the examiner has clearly shown that the feature concerning the type of the information source as claimed is merely that of a preferred embodiment and no criticality has been disclosed. The support for this conclusion is found in the present specification at column 4 (lines 20-23) in which applicant has admitted that the information source can be a cathode-ray-tube or

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a liquid crystal display. In this aspect, each the optical apparatus of Kato et al or Wood meets the requirement. Furthermore, the use of an information source in the form of a source providing modulated scanning light in place of a cathode-ray-tube is known to one skilled in the art as can be seen in the optical system provided by Opittek et al. In particular, at column 6 (lines 64-68), Opittek et al teach that the image source can be a cathode-ray-tube or a modulated laser scanning system. Thus, the modulated laser scanning system suggested by Opittek et al in the combined product provided by Wood and Kato et al will provide an intermediate image of the source.

12. Applicant's arguments filed on 12/04/2001 with regard to the rejections of claims 1-5, 7-12, 15-43, 46-48, 51-61 and 63-65 have been fully considered but found persuasive. Thus, the rejection of the mentioned claims under Macken with Kato et al set forth in the previous Office action are now withdrawn.

### ***Conclusion***

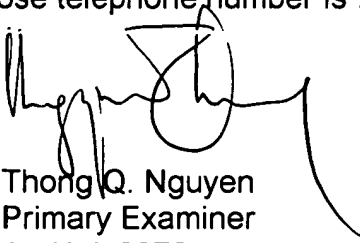
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (703) 308-4814. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A Dunn can be reached on (703) 305-0024. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.



Thong Q. Nguyen  
Primary Examiner  
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